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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN STEVEN WATSON,

Defendant and Appellant.

D060339

(Super. Ct. No. SCS219973)

APPEAL from a judgment of the Superior Court of San Diego County, Richard Monroy, Judge. Affirmed.

John Steven Watson pled guilty to charges stemming from a domestic violence incident and was granted probation. Terms of his probation included successful completion of a 52-week domestic violence recovery program. Watson completed the majority of the program, but was terminated from it due to an allegation he made sexist and threatening remarks to the facilitator. Based on his failure to complete the course,

the court revoked probation. Watson now appeals, claiming the court abused its discretion by revoking probation based on an incorrect standard. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 7, 2008, Watson pled guilty to one count of false imprisonment (Pen. Code, §§ 236, 237) and two counts of infliction of corporal injury (Pen. Code § 273.5, subd. (a)) stemming from the battery of his girlfriend. He was sentenced to 365 days of local custody and a four-year formal probation period, and was required as a condition of probation to successfully complete a 52-week domestic violence batterer's program.

Watson attended the La Mesa Counseling Domestic Violence Treatment Program until March 24, 2011, when he was terminated for making sexist and violent remarks. Specifically, program facilitator Theresa Guynn claimed Watson stood while in group therapy and said "Women deserve to be shot [because] it's the only way they learn." Guynn also claimed Watson addressed her directly, telling her she "could be taken, beaten, and hogtied and left and that would change you forever." Guynn reported that she felt viscerally threatened by Watson's statements, which violated the terms of a contract between Watson and La Mesa Counseling not to engage in bigoted or sexist behavior, or make threats against women. Guynn terminated Watson's enrollment, and reported the termination to the probation department.

In April 2011, the probation department filed a supplemental probation report indicating Watson had violated probation by failing to successfully complete the batterer's program. Watson denied the violation and requested an evidentiary hearing.

At the hearing, Guynn testified to Watson's conduct that resulted in termination, telling the court of Watson's statements and demeanor as well as program rules prohibiting sexist or threatening behavior. Watson also called witnesses on his own behalf, who testified they did not recall hearing Watson make the purported statements.

The court found Guynn's testimony credible and revoked Watson's probation for failure to complete the program. The court then reinstated probation under the same terms and conditions, adding 10 additional batterer's program sessions and 10 hours of community service.

DISCUSSION

Watson now appeals the revocation of his probation, claiming the court did not find that his failure to complete the batterer's program was a willful violation as required by *People v. Cervantes* (2009) 175 Cal.App.4th 291. Specifically, Watson argues he was unable to complete the program due to his termination, which was a circumstance beyond his control.

We review revocations of probation under the abuse of discretion standard. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) The trial court has great leeway in determining whether to revoke probation. (*In re Coughlin* (1976) 16 Cal.3d 52, 56.) The "facts supporting the revocation of probation may be proven by a preponderance of the evidence." (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) However, the evidence must support a conclusion the probationer's conduct constituted a willful violation of the terms and conditions of probation. "Where a probationer is unable to comply with a

probation condition because of circumstances beyond his or her control and defendant's conduct was not contumacious, revoking probation and imposing a prison term are reversible error." (*People v. Cervantes, supra*, 175 Cal.App.4th at p. 295; *People v. Zaring* (1992) 8 Cal.App.4th 362, 379.)

Here, Watson's conduct was complicit in his revocation. Although Watson was unable to comply with the conditions of his probation because of his termination from the program rather than a refusal to participate, his termination was based on his willful engagement in behavior unacceptable to program rules. The trial court heard testimony that Watson willingly made threatening statements against women, and was thus removed him from the program for violating the contract stipulations governing proper conduct. Those statements were well within Watson's control. Accordingly, we dismiss Watson's claim of error.

The judgment of revocation is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.